UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

ROSDEV HOSPITALITY, SECAUCUS, LP and
LA PLAZA, SECAUCUS, LLC[1]

and Case Nos. 22-CA-26794
22-CA-26922

UNITED HERE, LOCAL 69

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for the General Counsel
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New York, NY, for the Charging Party

DECISION

Statement of the Case

MINDY E. LANDOW, Administrative Law Judge. Based upon a charge and an amended charge filed on February 24 and March 21, 2005,[2] respectively, in Case No. 22-CA-26794 by UNITE HERE, Local 69 (the Union), and based upon a charge filed by the Union in Case No. 22-CA-26922 on May 25, a complaint was filed was issued on November 28 against Rosdev Hospitality, Secaucus, LP (Rosdev) and La Plaza, Secaucus, LLC (La Plaza) (collectively referred to as Respondent). The complaint alleges that Respondent is a successor employer to Felcor Suites, LP, d/b/a Crowne Plaza Meadowlands (Felcor). The complaint, as amended at hearing,[3] alleges in essence that Respondent violated Section 8(a)(1) and (5) of the Act by unilaterally changing how employee seniority is determined thereby resulting in a change in the accrual of employee benefits such as vacation and sick leave. The complaint also alleges that Respondent violated Section 8(a)(1) when a supervisor informed employees that Respondent was going to get rid of the Union.[4] Respondent's answer, amended at hearing, denied the material allegations of the complaint, and on March 21 and 22 and April 5 and 6, 2006 a hearing was held before me in Newark, New Jersey.[5]

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[1] The name of Respondent appears as amended at hearing.

[2] All dates hereafter are in 2005 unless otherwise specified.

[3] During the hearing, numerous allegations of the complaint were withdrawn by Counsel for the General Counsel.

[4] As discussed below, Respondent's motion to strike this paragraph of the complaint is denied.

[5] The case has some additional procedural history. On December 6, Respondent filed a Motion for a Bill of Particulars and a Motion for Summary Judgment. On December 15, Counsel for the General Counsel filed a Response to Respondent's Motion for a Bill of Particulars. On December 19, Associate Chief Administrative Law Judge Joel P. Biblowitz issued an Order

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On the entire record,[6] including my observation of the demeanor of the witnesses, and after considering the briefs filed by the parties, I make the following

Findings of Fact

I. Jurisdiction

Respondent, which is comprised of Rosdev, a limited partnership and La Plaza, a limited liability corporation, has an office and place of business located in Secaucus, New Jersey, where it is engaged in the operation of a hotel and a restaurant (the Crowne Plaza or Hotel.) Respondent admits that Rosdev and La Plaza are joint employers.[7] During the calendar year commencing on December 23, 2004 Respondent derived gross revenues in excess of $500,000 and purchased goods valued in excess of $5,000 directly from points outside the State of New Jersey. Respondent admits, and I find that it is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

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ruling on Respondent's Motion for a Bill of Particulars. On January 12, 2006 Counsel for the General Counsel filed an Opposition to Respondent's Motion for Summary Judgment, and on January 17, 2006 Respondent filed a reply to General Counsel's Opposition to its Motion for Summary Judgment. On January 30, 2006 the Board issued an Order denying Respondent's Motion for Summary Judgment.

[6] Respondent's unopposed motion to correct the transcript dated May 15, 2006 is granted and received in evidence as Respondent's Exhibit 13. Additionally, on the same date, Respondent filed a Motion to Reopen Record to Receive Newly-Available Evidence (Motion to Reopen the Record), which was opposed by Counsel for the General Counsel. The evidence proffered by Respondent involves documents relating to a civil action filed in the Southern District of New York by the Union on May 5, approximately one month after the close of the record in the instant case. This lawsuit involves the Charging Party's claim that in connection with the purchase of Felcor's assets, Respondent committed itself to be bound by the terms of the collective bargaining agreement between Felcor and the Union. Appended to the complaint filed in that matter is a substantially redacted copy of the sales agreement between Felcor and Rosdev, a document which the General Counsel had sought to obtain through a subpoena duces tecum issued in connection with the hearing in this case. According to Respondent, these documents are relevant because they "show the bad faith of the Charging Party" and reflect on the General Counsel who sought to obtain this document while a redacted copy was in the Union's possession, and failed to disclose this fact. Upon consideration, I find that the "evidence" proffered by Respondent is not relevant to the issues before me. I note that, notwithstanding the Union's lawsuit and its apparent position to the contrary, the General Counsel has not alleged, and is not contending, that Respondent voluntarily assumed its predecessor's collective-bargaining agreement. In this regard, it is well settled that the General Counsel controls the theory of the case, and the administrative law judge cannot consider theories for violations argued by the charging party that substantially differ from the General Counsel's, *Zurn/N.E.P.O.*, 329 NLRB 484 (1999). Moreover, even assuming that the General Counsel was aware that the Union was in possession of a redacted copy of the Felcor sales agreement, the fact that it may have sought to obtain through subpoena a complete copy of this agreement sheds no light on the issues before me. Accordingly, Respondent's Motion to Reopen the Record is denied.

[7] The complaint alleges that Rosdev and La Plaza are a single employer; however, it appears from Counsel for the General Counsel's brief that he has accepted Respondent's representation that the named entities are joint employers, and I so find.

II. The Labor Organization

Respondent admits and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. Alleged Unfair Labor Practices

Background

The Crowne Plaza Hotel & Exhibition Center, located in Secaucus, New Jersey, was formerly owned by Felcor Suites, LP (Felcor) and managed and operated on behalf of Felcor by Bristol Hotels, a division of Intercontinental Hotel Group.

Certain of the former Felcor employees, subsequently hired by Respondent, are represented by the Union in the following unit:

All bellmen/valets, bartenders, bar assistants, tournant cooks, cooks I, cooks II, pantry workers, room attendants, housemen, pot washers, stewards, night cleaners, cafeteria attendants, hosts-hostesses/cashiers, servers, buspersons, storeroom employees, and linen employees [employed at the Employer's Hotel in Secaucus, New Jersey] excluding office clerical employees, confidential employees , executives, guards and supervisors as defined in the Act.

Respondent denies that this is an appropriate unit, alleging that during bargaining, the Union agreed to two units: one consisting of food and beverage employees employed by La Plaza and one of housekeeping employees, employed by Rosdev. In this regard, it appears that in response to a proposal put forth by Respondent, the Union stated that it was willing to discuss negotiating two separate collective bargaining agreements. However, to date, the parties have not entered into a collective bargaining agreement covering any of the enumerated employees or any other agreement redefining the scope of the extant collective bargaining unit. As this historically has been the unit represented by the Union, I find that it is an appropriate unit.

Felcor and the Union were parties to a collective-bargaining agreement which expired on September 30, 2003 (the Felcor Agreement). On September 30, 2004, Counsel for the Crowne Plaza sent a letter to the Union providing, in relevant part:

> As you know, the collective bargaining agreement ("Agreement") between UNITE HERE Local 69 (Local 96), and the Crowne Plaza Meadowlands Hotel ("Hotel"), was set to expire by its terms on September 30, 2003 and has been extended. Subsequent negotiations have been held regarding a Successor Agreement. As we have advised you, the Hotel is scheduled to be sold to Rosdev Hotel Management Services, Inc. ("Rosdev"); the anticipated closing date for this sale is October 26, 2004. We have previously agreed to meet for the purpose of discussing "effects" bargaining issues on October 8, at 1:00 p.m.
>
> . . . .
>
> This is to further confirm that the current Agreement shall be extended and shall continue in full force and effect unless either party gives the other ten (10) days written notice of intent to terminate said Agreement.

This letter was subsequently executed by representatives of both the Crowne Plaza and

the Union.[8]

Respondent Assumes Operations at the Hotel

On December 23, 2004, Felcor completed an asset sale of the Hotel to Respondent. Peter Valenzuela was hired as a consultant to Respondent in early December 2004, prior to the sales transaction. Valenzuela arrived at the facility on about December 10, and was provided with an office at the Hotel. Valenzuela spent three or four days a week at the facility, reviewing profit and loss statements, consulting with Herre and familiarizing himself with the operations of the Hotel. Valenzuela testified that the sales contract between Felcor and Respondent obligated Respondent to hire 66 2/3% of the Hotel's workforce. He further stated that he made the decision on December 22 to hire all of the predecessor's hourly employees, with the exception of the bartenders, due to Respondent's lack of a liquor license.

Beginning in early December 2004, Awilda Maldonado, who at the time was Felcor's Assistant Director of Human Resources,[9] began distributing employment applications to employees which named "Rosdev" as the employer. Maldonado testified that Herre told her that Felcor planned to remove its personnel records after the sale and instructed her to obtain employment applications from another Rosdev facility located in Connecticut and have employees complete the applications for Respondent's files. Maldonado distributed the applications to employees in small groups over a period of several days. As she did so, various employees asked her questions about whether there would be changes when Rosdev took over. Maldonado admitted that she told employees that things would remain the same after the takeover, but when testifying herein stated that that she understood those statements to refer to job classifications and positions. When asked what she told employees regarding issues such as paid vacations and sick leave, Maldonado testified, "I said paid time off would be – seniority would be honored for scheduling reasons – scheduling purposes – but I didn't know what was going to happen with vacations, meaning paid time off and things like that. It would have to be negotiated with the Union and the new owner. But my opinion was it was not going to be honored." According to Maldonado, she made clear that this was her opinion. She further testified that her instructions relating to the distribution of the employment applications to employees came from Felcor, and she was not authorized by Respondent to make representations to employees regarding terms and conditions of employment, including paid vacation and sick leave policy.

A number of employees called by Counsel for the General Counsel testified that, in their

[8] This document was entered into evidence over the objection of Counsel for Respondent, who notes that the Complaint alleges that the "most recent" collective bargaining agreement was one which expired by its terms on September 30, 2003. Respondent maintains that there was no agreement in existence at the time it assumed operations of the Hotel. In this regard, on January 4, Counsel for Respondent wrote to the Union asserting that, "[i]t has been brought to my attention that there was no agreement in effect between the seller of the Crowne Plaza and the Union at the time of its most recent acquisition." On January 6, the Union responded with its assertion that the collective-bargaining agreement had not expired, enclosing a copy of the letter described above. As has been previously noted, whether or not there was a current collective-bargaining agreement in existence at the time of the sale, Counsel for the General Counsel does not contend that Respondent agreed to adopt any such agreement between its predecessor and the Union.

[9] Maldonado was retained as Respondent's Human Resources Director. At the time of the hearing, Maldonado was no longer employed by Respondent.

interactions with Maldonado, they were assured, in essence, that everything would remain the same. This testimony was echoed by Union representative Rebecca Perez, who was present for a period of time while the applications were being completed. Employees Tommie Wilson, Milan Petesic and Maria Ortiz additionally testified that Maldonado's assurances extended to specific questions concerning paid vacation and sick leave. According to Edmund Bermudez, Maldonado told him that she thought seniority would be honored for scheduling, but she didn't know about vacations.

Respondent assumed operations of the Hotel on December 23, 2004. Virtually all the predecessor's employees were hired (with the exception of four or five bartenders, as noted above). There was no hiatus in operations, no substantial change in business operations or services offered to the general public. After the sale was completed, in January 2005, Maldonado distributed additional employment applications to food and beverage employees naming La Plaza as the employer.

Valenzuela testified that he did not meet with Maldonado until after Respondent assumed operations at the Hotel. He admitted that he did not communicate, either orally or in writing, any changes to the terms and conditions of unit employees prior to or upon the assumption of operations, and he was not aware that any other representative or agent of Respondent had done so either. Valenzuela testified, and Union Assistant Trustee Robert Demand confirmed, that prior to the takeover, the Union did not provide Respondent with any information regarding past practices or special interpretations with respect to the Felcor Agreement.

On or about February 5, Valenzuela held an employee luncheon where he introduced himself and told employees that he had an "open door" should they have any concerns. He testified that he told employees, "[t]hat we're a successor, even though I'm not sure I used those words, but basically that things in terms of salaries, that we're not going to change any wage rates, or that we're going to continue with the same rates, the same working conditions that I understood from this, we're continuing on." He also told employees that Respondent would "follow" the contract.

When the sales transaction was completed and Respondent took over the operation of the Hotel, Felcor paid out to employees their accrued but unused vacation benefits.[10]

The Relevant Contractual Provisions

The preamble to the Felcor Agreement defines Felcor as the "Employer." Article 12 of the Agreement provides as follows:

> For purpose of this Agreement, employees shall have two (2) types of seniority:
>
> A. (1) Hotel Seniority is defined as the length of continuous service with the Employer, measured from the most recent date of hire.

[10] Valenzuela testified that at some point prior to Respondent's assumption of operations he was shown a letter from Felcor addressed to union-represented employees. This letter provides, among other things, for a payout of accrued vacation time. There is no evidence, however, that employees were ever sent this letter, and it does not appear that Respondent contends that it was ever distributed to employees.

(2) Department Seniority is defined as the length of service in a job classification measured from the date the employee is regularly assigned to that job.

B. (1) Hotel Seniority shall be used to determine length of service for vacation and pension benefits.

(2) Department Seniority shall be used to determine order of selection of vacation periods, scheduling of days off, order of layoff and recall, order of employee call-in and preferences on leaves of absence.

Section 14(A) of the Felcor Agreement provides for paid vacations, as follows:

All regular scheduled full time employees covered by this Agreement who shall have been employed continuously for the period specified below shall receive the following annual vacations with pay:

One year but less than two years . . . . . one week
Two years gut less than five years . . . . . two weeks
Five years but less than ten years . . . . . three weeks
Ten years but less than twenty . . . . . four weeks
Twenty years or more . . . . . five weeks

Section 28 of the Agreement provides for paid sick time as follows: "All employees covered by this Agreement who have been continuously employed by the Employer for a period of at least one (1) year shall be entitled to five (5) days sick leave with pay."

The Alleged Unilateral Changes

Respondent and the Union first met to bargain on February 23. Demand had heard from employees that their respective supervisors had told them that Respondent was planning to treat them as new hires. At the bargaining table, Respondent withdrew a written proposal previously given to the Union, explaining that it hadn't been cleared by Respondent's financial advisors, and stated that it would present a written proposal at the next meeting. The Union went through their initial proposal for a three year agreement and, during the course of the discussion, Respondent's attorney, Norman Buchsbaum, advised the Union that as one of the steps it was taking to improve the economic situation at the Hotel, Respondent would not recognize years of service with any other employer for crediting the amount of vacation time earned by employees. Respondent was going to treat its workers as new employees,[11] and while it would consider seniority accrued with Felcor for purposes of layoff and recall, it would not count toward paid time off. Respondent asserted that its position was in accordance with Article 12 of the Felcor Agreement, which defined employees' seniority in this regard as service with "the Employer." Respondent asserted that under the contract, this meant service with Felcor and not service at the Hotel. Thereafter, at a bargaining session held on March 8, Respondent submitted a written proposal to the Union seeking to interpret the phrase "hotel seniority" as to refer to employment with Rosdev and La Plaza rather than Felcor:

[11] Demand testified that when this was first brought to his attention during negotiations, he asked the employee members of the bargaining committee whether they had ever been told that their employment was going to be terminated. These employees denied that they had ever been so informed.

> Seniority shall be determined by departments and classifications with the departments. Seniority shall govern vacation preference as well as layoffs. Hotel seniority refers to the length of service with Rosdev in the bargaining unit position and shall apply in determining eligibility for fringe benefits provided under this Agreement . . .

On April 11, the Union submitted a revised bargaining proposal seeking changes to the language of Section 12 as follows:

> The Union is modifying its Section A(1) to read as follows: '*Hotel Seniority is defined as the length of service at the hotel, measured from their original date of hire*. [Emphasis in original.]

To date the parties have reached no agreement regarding how hotel seniority is to be computed. The record fails to contain evidence regarding any subsequent negotiations concerning this issue.

Employee Seniority and Leave Eligibility Prior to December 23 and Thereafter

Felcor had purchased the Hotel in 1997. It appears from the record however, that Felcor honored employees' prior service at the Hotel for purposes of determining paid vacation leave. For example, Milan Petesic has worked at the Hotel for 29 years. In 2004, under Felcor, he earned five weeks paid vacation, which he would only be entitled to after 20 years of service, as noted above. Edmund Bermudez worked at the hotel for 21 years, except for a three month period in 1987. In 2004, he earned four weeks paid vacation. Similarly Tommie Wilson, a thirteen year employee at the Hotel, earned four weeks of paid vacation in 2004, as did Debra Sullivan, also a 13 year employee and Maria Ortiz, a 12 year employee. All these employees received no paid vacation time for the first year after Rosdev assumed operations.

Valenzuela testified that the policy Respondent followed since it took over operations at the Hotel was to accord employees no paid vacation or sick leave during the first year they worked for Respondent. Thereafter, employees would receive one week pf paid vacation after one to two years of service with Rosdev or La Plaza, and an additional week for service from two to five years. Valenzuela could not recall the schedule for additional periods. Valenzuela additionally acknowledged that employees were required to work 1500 hours during the year to obtain seniority credit for that year.[12]

The Alleged 8(a)(1) Violation

Gisela Figueroa, who is employed as a hostess/cashier in the Hotel restaurant, testified that she first met Housekeeping Supervisor Jonathan Duran during a break in the smoke room in early March 2005. At this point in time Duran, who was employed with Respondent from late-February to July 2005, had been with the Hotel only a short period of time.[13]

On this occasion, Figueroa was on a break and was conversing with Banquet Captain Mario Taboada and Chef/Kitchen Manager, Boris Nanajara.[14] Figueroa was an employee

[12] This requirement does not appear in the Felcor agreement. However, as noted above there is a requirement that employees be "continuously employed" to be eligible to receive credit toward their vacation or sick leave for any particular year.

[13] The parties stipulated that Duran is a supervisor within the meaning of the Act.

[14] In his brief, Counsel for Respondent characterizes the Chef/Kitchen Manager as a

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member of the Union bargaining committee and Taboada and Nanajara were "making fun of the union and our contract and they were joking around." Duran entered the room, and Figueroa testified that she understood that he had just left a manager's meeting.[15] According to Figueroa, Duran advised Figueroa to get the company's health insurance. He went on to state that "I think it is a good deal because I just heard upstairs that they're going to get rid of the Union." Nanajara, who had also recently come from the meeting, then told Duran to leave Figueroa alone because she was very sensitive about the Union. Duran, who is no longer employed by Respondent, did not testify, nor did Taboada or Nanajara.

On cross-examination, Counsel for Respondent elicited testimony that Figueroa did not complain to anyone in management about Duran's comments. She did inform her Union representative, Katie Conner, but stated that Conner "let it drop" and no grievance was filed. The record does establish, however, that Demand learned of the comment, although he did not attribute it to anyone in particular, and at a bargaining meeting requested assurances that Respondent was going to continue bargaining with the Union.

IV. Analysis and Conclusions

Applicable Legal Principles

The Board's traditional test for determining if a purchaser has a duty to continue the bargaining relationship established by its predecessor is whether there is a substantial continuity in the employing enterprise. A comparison of business operations, plant, work force, jobs, working conditions, supervisors, machinery, equipment, production methods and product of service is made to ascertain if continuity exists. *Fall River Dying Corp. v. NLRB*, 482 U.S. 27, 42-46 (1987). In the instant case, there is no doubt, and Respondent admits, that it is a successor employer. Respondent continued providing the same service to its customers without any hiatus, at the same location and using the same supervisory and non-supervisory staff.

As the Supreme Court has held:

> Although a successor employer is ordinarily free to set initial terms on which it will hire the employees of a predecessor, there will be instances in which it is perfectly clear that the new employer plans to retain all of the employees in the unit and in which it will be appropriate to have him initially consult with the employees' bargaining representative before he fixes terms.

NLRB v. Burns Security Services, 406 U.S. 272, 294-295 (1972).

In *Spruce-Up Corp*., 209 NLRB 194, 195 (1974), enfd. 529 F.2d 516 (4th Cir. 1975), the Board stated that the "perfectly clear" caveat should:

> be restricted to circumstances in which the new employer has either actively or, by tacit inference, misled employees into believing that they would all be retained without change in their wages, hours, or conditions of employment, or at least to circumstances where the new employer . . .has failed to clearly announce its intent to establish a new set of conditions prior to inviting former employees to accept employment.

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managerial employee.

[15] According to Figueroa, the manager's meeting was held between 9:00 and 10:00 a.m. The discussion at issue took place at about 9:45.

Moreover, under *Spruce-Up* and its progeny, any potential announcement in terms and conditions of employment must be clearly set forth prior to or upon takeover. The successor employer is free to set new initial terms and conditions of employment up until the moment when it offers employment to the predecessor employer's employees, but not after. *Arden's* 211 NLRB 510, 512 (1974). See also *Canteen Co*., 317 NLRB 1052 (1995), enfd. 103 F.3d 1355 (7th Cir. 1977), where a successor employer made "perfectly clear" to the union representative that all employees would be hired, a wage reduction announced to employees the next day, prior to formal offers of employment being extended, was found to be an unlawful unilateral change.

Moreover, even if an employer announces some changes in terms and conditions of employment, it is not thereafter privileged to make other changes that are not specifically announced to employees before the takeover. *301 Holdings, LLC.,* 340 NLRB 366, 367 (2003) (post takeover termination of fringe benefits unlawful because successor failed to announce them prior to takeover); *Specialty Envelopes Co*., 321 NLRB 828, 832 (1996) (although Burns successor lawfully announced certain changes prior to takeover, unannounced change in attendance policy one month later was unlawful). This is the case, even where the change occurs shortly after the respondent assumes operations. See e.g. *Bronx Health Plan*, 326 NLRB 810, 813 (1998). Moreover, generalized or speculative statements that a successor employer may make future unspecified changes are not sufficient to put employees on notice. See e.g. *East Belden Corp*., 239 NLRB 776, 793 (1987). Similarly, discussion of possible changes, even if in specific terms, is not sufficient to put employees on notice. See e.g. *Fremont Ford*, supra, where the successor employer told the unions that it had doubts about the retention of only a few unit employees, its stated desire to change seniority and institute a flat rate was found to be insufficient to indicate its intent to establish new conditions of employment. Thus, to the extent an employer's pre-takeover announcement contains ambiguities regarding the terms and conditions of employment offered to employees, such ambiguities will be resolved against the employer.

Applying these principles to the facts of the instant case, I find that the "perfectly clear" caveat is applicable herein. Thus, as discussed above, the Respondent solicited employment applications from its employees beginning in early December 2004. Respondent has acknowledged that was no clear announcement at this time or by the time it assumed operations on December 23 that Respondent intended to establish new terms and conditions of employment.[16]

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[16] During the hearing a considerable amount of testimony was adduced, over Respondent's continuing objection, regarding comments that Maldonado allegedly made to employees at the time she distributed employment applications in early December. Counsel for the General Counsel contends that the evidence establishes that Maldonado acted with apparent authority on behalf of Respondent and, as its agent, assured employees that their terms and conditions of employment would remain the same. Respondent contends that Maldonado was acting upon instructions from Felcor, as a Felcor employee and that she was viewed as such by the employees in question. The Charging Party also takes the position that Maldonado was not acting as an agent of Respondent at the time. Upon consideration, I find that under the circumstances of this case, Maldonado's agency status is irrelevant to a determination of the issue of whether Respondent is a "perfectly clear" successor herein. The evidence establishes that Maldonado did not announce new terms of employment to employees but rather responded to employee questions with her opinion, in an ad hoc manner. Such comments are not sufficient to constitute the sort of clear and unambiguous announcement of new terms that is required by

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The Alleged Unilateral Changes

The complaint alleges that after it assumed operations Respondent announced for the first time that, for the purposes of benefits including vacation accrual and sick leave accrual, it considered employees' seniority to commence on the date Respondent began its operations at the Hotel and that as a result of these actions, Respondent reduced employees' vacation accrual rate and sick leave accrual rate. Respondent does not deny that it has done so, but argues that its actions were privileged by the terms of the Felcor Agreement. While Respondent asserts, apparently with the concurrence of the General Counsel, that it did not assume or adopt the Felcor Agreement, Respondent maintains that it looked to this document to understand and maintain the status quo as it negotiated a new contract with the Union. In particular, Respondent argues that it determined the status quo of employees' seniority for purposes of vacation and sick leave calculation as defined by Section 12. As Respondent states in its brief:

> [T]he plain language of Section 12 of the predecessor's Agreement with the Union supports Respondent's actions. Respondents maintained the employees' terms according to the plain language to which the Union had previously agreed . . . [which] defines employee seniority for purposes of calculation of vacation and sick leave benefits to employment service with a named Employer, here *Felcor*, the "Employer" defined in the preamble, definitional paragraph of the Felcor Agreement; and *not* service to the hotel. [Emphasis in original.][17]

Respondent maintains that the plain language of Section 12 of the Felcor Agreement demonstrates that the Union previously agreed that a change of employer at the Hotel necessarily would change employees' seniority for purposes of vacation and sick leave calculation. In this regard, Respondent contends that the Union's April counterproposal, seeking to redefine the method by which hotel seniority would be calculated, constitutes an admission against interest that the language in the Felcor Agreement supports Respondent's interpretation of the contract. Respondent further argues that it did not effect a unilateral change because the plain language of the Felcor Agreement preempts resort to past practice for its interpretation.[18] In its brief, Respondent maintains that where the predecessor's contract has expired, Board law does not require a successor employer to adopt the predecessor's past practices: ("One reason it undoubtedly takes this posture is how would a successor discern what those practices were? What would happen if there was a dispute about the contents of the applicability of an alleged past practice?") In support of its contentions, Respondent cites *Ameristeel Corp. v. Teamsters*, 297 F.3d 264, (3rd Cir. 2001),[19] quoting *Pick-Mt. Laurel Corp. v. NLRB*, 625 F.2d 476 (3d Cir.

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the Board.

[17] Respondent further argues that had it been compelled to assume the Felcor Agreement the term "Employer" would have applied to Respondent and the plain language of Section 12 would have defined the employees' seniority for purposes of vacation and sick leave calculation to their hire date by Respondent, i.e. December 23, 2004.

[18] In support of this contention, Respondent cites to a treatise on arbitration law, Elkouri and Elkouri, *How Arbitration Works*, Sixth Edition, p. 627 n. 120, and various arbitration cases referred to therein. According to Respondent, this authority stands for the proposition that where there is a conflict between the clear and unambiguous language of a contract and an asserted past practice, an arbitrator is required to follow the language of the contract.

[19] In that case, a steel manufacturer bought an existing plant and expressly refused in the purchase agreement to be bound by the predecessor's collective bargaining agreement. It thereafter sought an injunction to prevent the arbitration of disputes with the union pertaining to

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1980), where the Third Circuit held "that a successor does not stand in the same shoes as its predecessor because it will not be bound to the previously bargained for terms, [and] the [Supreme] Court construed the relevant policies to prevent imposing on the successor an obligation to be bound by past events and arrangements." Id. at 484. When read in context, however, it is apparent that the foregoing discussion relates to the question of whether a successor can be bound to the predecessor's collective-bargaining agreement (an issue not before me), and not to whether past practices constitute terms of employment that a successor is obliged to honor.

Respondent also cites, among other cases, *Made 4 Film, Inc*. 337 NLRB 1152 (2002) where the Board, quoting *R.E.C. Corp.*, 296 NLRB 1293 (1989), held that, " 'Generally, an employer has a statutory obligation to follow the terms and conditions in an expired contract until a new agreement is concluded or good faith bargaining leads to impasse.' " That case, which involved an employer's continuing obligation to make benefit fund contributions beyond the expiration date of a contract, addresses issues which are not directly relevant herein.

It is well-settled that a successor employer, like any other, violates Section 8(a)(5) by making unilateral changes to terms of employment which are mandatory subjects of bargaining. *NLRB v. Katz*, 369 U.S. 736 (1962). Even in circumstances where an employer has set certain initial terms, employers still have an ongoing obligation to bargain with a union over any subsequent changes to terms and conditions of employment. *301 Holdings, LLC*, supra; *Specialty Envelopes*, supra.

Under Board law, in the absence of any initial announcement of new terms and conditions of employment, a successor employer must maintain the status quo regardless of whether it adopts a predecessor's collective bargaining agreement. Moreover, an employer's past practices and unwritten policies which involve the application of terms and conditions of employment are viewed as mandatory subjects of bargaining which are protected from unilateral change. *Peerless Food Products, Inc*., 236 NLRB 161 (1978), citing *Granite City Steel Company*, 167 NLRB 310 (1967). Contrary to the assertions of Respondent, Board law requires that a successor employer who is obliged to maintain the terms and conditions of employment of its predecessor must also maintain its past practices and unwritten policies. Once the duty to bargain has attached, the successor is precluded from unilaterally changing those terms and conditions of employment. *Blitz Maintenance*, 297 NLRB 1005, 1008 (1990) enfd. 919 F.2d 141 (6th Cir. 1990); *Likra, Inc*., 321 NLRB 134, 137 (1996).

Moreover, it is undisputed that paid vacation and sick leave are mandatory subjects of bargaining. See *Pine Brook Care Center, Inc*. 322 NLRB 740, 748 (1996) (and cases cited therein.) Unilateral changes made in the manner in which such benefits are accrued are violative of the Act, as are unilateral changes in employee seniority. This is true even in situations where employee entitlement to such benefits and status stems from the predecessor's past practice, rather than any contractual obligation.

In *Hilton's Environmental, Inc*. 320 NLRB 437, 439 (1995), the Board, reversing the administrative law judge, found that a successor employer could not lawfully claim to rely upon contractual provisions to support the unilateral imposition of a new probationary period for employees. The predecessor's agreement, which the successor there adopted, called for a 60-

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the agreement. In granting the injunction, the court found the successor could not be forced to arbitrate the extent of its obligations under that agreement, because it had none, and any arbitration award would be unenforceable.

day probationary period for new or rehired employees. The judge found that the respondent had effectively hired or rehired the employees when it commenced operations and could lawfully impose a new probationary period. In rejecting the judge's analysis, the Board found that the imposition of a new probationary period was inconsistent with an established past practice of the predecessor and was not authorized by the collective-bargaining agreement. In *Stephenson Haus*, 279 NLRB 998, 1003 (1986), as here, the General Counsel did not contend that the respondent had adopted its predecessor's collective-bargaining agreement. In that case, the administrative law judge, affirmed by the Board, found that the respondent violated Section 8(a)(1) and(5) of the Act when it changed the manner in which waitresses were assigned to work at banquets, thereby unilaterally discontinuing crediting for seniority any service by an employee to the employing industry rendered prior to the date the respondent assumed operations and creating a situation whereby almost every employee had identical seniority.[20] And, in *Kirby's Restaurant*, 295 NLRB 897, 901 (1989), cited by Counsel for the General Counsel, the Board found an employer's unilateral elimination of seniority credit earned during employment with predecessor employers which was used for purposes of determining vacation pay entitlement violated Section 8(a)(1) and (5) of the Act.[21] In that case, the respondent unsuccessfully argued, as Respondent does here, that its employees were new hires. [22]

Reviewing the above noted precedent I do not find any support for Respondent's argument that the contractual language of the Felcor Agreement privileges it to unilaterally eliminate years of employee seniority, or alter the method by which vacation and sick leave is accrued.[23] As the Board has long held: "although the policy does not derive from the express

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[20] As part of the remedy therein, the respondent was ordered to assign its waitresses to serve banquets on the basis of seniority accrued since their original date of hire at the facility in question.

[21] In that case, the relevant contractual provision provided, inter alia, that "[t]he period of service for the purpose of earning a vacation with pay shall begin with the date of employment with the *particular employer.*" (emphasis supplied).

[22] Respondent's argument that Felcor terminated the employment of its employees, and that they were all initially hired by Respondent on the date it assumed operations is a semantic distinction without a difference. Obviously, at some point in time Felcor ceased to be the employer of the employees in question, and they were transferred to Respondent's payroll. There is no evidence, however, that employees were ever notified that their employment was being terminated, that any steps were taken to implement such a personnel action or that there was any hiatus in operations. What is significant for the purposes of this case is whether employees were told that should they continue on with the new employing entity, such employment would continue under changed circumstances. In this case, it is apparent that they were not so apprised. Moreover, as discussed above, such an argument has been considered, and rejected in similar contexts. See *Kirby's Restaurant*, supra, at 900; *Hilton's Environmental*, supra at 439.

[23] In this regard, I do not concur with Respondent's apparent argument that the language of the Felcor Agreement constitutes a waiver of the Union's right to bargain over this issue. As is well-settled, employees' rights to their vested benefits cannot be divested without an effective waiver from their bargaining representative. The Board, and the courts, have repeatedly held that waivers of statutory rights "are not to be lightly inferred, but instead must be 'clear and unmistakable.'" *Georgia Power Co*., 325 NLRB 420 (1998), enfd. mem. 176 F.2d 494 (11th Cir. 1999), citing *Metropolitan Edison Co., v. NLRB*, 460 U.S. 693, 708 (1983). "Either the contract language relied upon must be specific or the employer must show that the issue was fully discussed and consciously explored and that the Union consciously yielded or clearly and unmistakably waived its interest in the matter." *Georgia Power Co*., 325 NLRB at 420-421. In

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terms of the collective bargaining agreement, the past practice elevates it to a term of employment not susceptible to unilateral change." *Peerless Products*, supra, at 161. [24]

With respect to Respondent's argument that it was not furnished with any written accounting of past practices or special interpretations of the Felcor Agreement, I note that Respondent has not argued, and there is no evidence, that it was unaware of past practices regarding seniority or the accrual of paid vacation and sick leave. In this regard Valenzuela testified that he spent some two weeks reviewing Felcor records including profit and loss statements. I find it unlikely that under these circumstances he would not have familiarized himself with Respondent's paid time off policies. Moreover, I note that the Board has rejected the contention that a successor's initial ignorance of a past practice would serve to excuse a subsequent unilateral decision to terminate that practice. See *Pepsi-Cola Distributing Co., of Knoxville, Tenn.*, 241 NLRB 869, 970 (1979) (employer's unilateral discontinuation of practice of paying a year's end bonus to salesmen not excused by fact that it was unaware of the practice at the time it purchased the business or announced to employees that working conditions would remain the same.)

Accordingly, I find that Respondent's unilateral change in seniority for unit employees and concomitant changes in the manner in which paid vacation and sick leave is accrued violated Section 8(a)(1) and (5) of the Act, as alleged.

The Alleged Violation of Section 8(a)(1)

The complaint alleges that Respondent violated Section 8(a)(1) of the Act when its supervisor, Jonathan Duran, informed employees that the Employer is going to get rid of the Union.[25] At the hearing, and in its brief, Respondent moved to strike this allegation of the complaint insofar as it asserts that the Regional Office failed to conduct a proper investigation and, in particular, never provided it with an opportunity to present evidence to rebut the allegation. I note, however, that the first amended charge in Case No. 22-CA-26794 specifically alleges that, "the Employer has told employees that there will be no Union at the Hotel, and that

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considering waiver, the Board also considers extrinsic evidence bearing on the parties' intent, including bargaining history and past practice under the contract. See *Indianapolis Power & Light Co*., 291 NLRB 1039, 1040-1041 (1988), enfd. 898 F.2d 524 (7th Cir. 1990). In the instant case, I find that the contractual language relied upon, viewed in conjunction with an established past practice of crediting seniority earned with prior employers not only fails to meet this exacting standard but strongly militates in favor of the conclusion that there was no waiver. In this regard, I do not find the Union's April bargaining proposal to constitute any sort of "admission against interest," as Respondent suggests, but rather construe it as further evidence that the Union never "consciously yielded" its interest in this matter.

[24] The fact that Felcor paid employees for their accrued time as of the date it ceased operations does not relieve Respondent of its continuing obligation to honor the method previously employed to determine the amount of paid vacation and sick leave owed to employees on an annual, ongoing basis.

[25] The complaint as issued identifies this individual as a Housekeeping Supervisor named Jonathan (last name unknown.) I note that in Respondent's Motion for a Bill of Particulars, Respondent requested information regarding where the alleged statement was made to employees (which was supplied by Counsel for the General Counsel) but did not request the General Counsel to identify the supervisor allegedly making such comments by surname. At the hearing, this individual was identified as Jonathan Duran, and Respondent admitted that he was a supervisor of Respondent during his employment.

management is getting out of the Union." Moreover, it is well settled that, "it is not the function of the *charge*, . . . to give notice to a respondent of the specific claims made against him. Rather, that is the function of the complaint." *Redd-I, Inc*., 290 NLRB 1115, 1116-1117 (1988) (emphasis in original). I further note that when Respondent filed its Motion for a Bill of Particulars it requested information about the location where the comment was allegedly made, but did not request to be advised of the surname of the agent involved, identified in the complaint as Jonathan (last name unknown).[26] I conclude therefore, that irregardless of any alleged deficiencies in the investigatory process, Respondent was sufficiently put on notice by the complaint of both the identity of this individual as well as the nature of the alleged violation and had a full opportunity to garner and present evidence to rebut the allegations contained therein. Where, as here, a respondent has ample opportunity to defend against an allegation of unlawful conduct, the requirements of procedural due process are satisfied, *Redd-I*, supra at 1117. Accordingly, I deny Respondent's motion to dismiss this allegation of the complaint.

As a substantive matter, Respondent contends that, even if such a comment was made, this type of stray remark standing alone is not the sort that coerces, restrains or interferes with the exercise of employees Section 7 rights. In support of this argument, Respondent describes Duran as a new employee and low-level supervisor[27] who did not have any supervisory authority over Figueroa and who was simply joining in a smoke-break conversation. Respondent argues that Duran made no threat to Figueroa, nor did he promise her a benefit and notes that he was remonstrated by the Chef/Kitchen Manager for his remark. Respondent characterizes Duran's comment to Figueroa as "hearsay" and states that there is no evidence that Duran knew what he was talking about, or had heard any purported comment correctly. Respondent denies that Duran had agency status as his comment was not made in furtherance of any official agenda or policy of Respondent, and notes that the Board has held that that a person may be an agent of an employer for one purpose, but not another.[28] Respondent further argues that it is obvious that the Union did not take Duran's purported comment seriously, as it did not choose to pursue the matter. Moreover, Respondent maintains, there is no allegation or evidence that it had any anti-Union animus, and points to the fact that as a successor employer it immediately recognized and commenced bargaining with the Union. All the above circumstances, it is contended, support a finding that Duran's conduct was not a violation of the Act.

The basic test for an 8(a)(1) violation is whether the employer engaged in conduct, regardless of intent, which reasonably tends to interfere with the free exercise of employee rights under the Act. *American Freightways Co*., 124 NLRB 146, 147 (1959). In this regard, the Board, in varying contexts, has held that supervisory statements to employees to the effect that an employer is planning to "get rid" of a union are violative of the Act. See e.g. *Hotel Roanoke*,

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[26] At the hearing, the parties stipulated that Duran is the individual referred to in the applicable paragraph of the complaint and that Duran was a supervisor within the meaning of the Act.

[27] The only evidence in the record pertaining to the scope of Duran's supervisory responsibilities is a memorandum issued on July 1 citing deficiencies in the accuracy his daily reports regarding departures and vacant clean rooms.

[28] In support of this position, Respondent cites *Sea Mar Community Health Centers*, 345 NLRB No. 69 (2005) (*quoting Pan Olston Co*., 336 NLRB 305, 306 (2001)). In that case, the Board found the respondent did not violate the Act when it unilaterally closed a dental lab which had been established by a supervisor albeit without authorization and directly contrary to the wishes of the respondent's highest management. In that instance, the Board found that the supervisor acted outside the scope of his agency.

293 NLRB 182, 189 (1989); *L. W. LeFort Company, Inc*., 290 NLRB 344, 349 (1988). See also *Basic Metal and Salvage Company*, 322 NLRB 462, 464 (1996).

With regard to the issue of Duran's agency status, the Board has held that "an employer is bound by the acts and statements of its supervisors whether specifically authorized or not." *Dobbs International Services*, 335 NLRB 972, 973 (2001). See also *Grouse Mountain Lodge*, 333 NLRB 1322, 1328 fn.7 (2001), enfd 56 Fed. Appx. 811 (9th Cir. 2003). This is true even where the supervisor's acts are contrary to the employer's instructions. Id. See also *Dixie Broadcasting Co*., 150 NLRB 1054, 1079 (1965).

In support of its argument that Duran's comment did not rise to a violation of the Act, Respondent relies upon *Awrey Bakeries*, 335 NLRB 138 (2001). In that case, a first-line supervisor attempted to prevent an employee member of the union governing committee from attending a meeting with management, clearly within the scope of his responsibilities, and threatening him with discipline if he did so. The evidence established that the supervisor in question was under a misapprehension about what the employee could do by way of union activities during the workday. The employee, who was more familiar with his rights than the supervisor, attended the meeting, without consequence. Shortly thereafter, a managerial employee informed the supervisor about the scope of union activities which the employee was authorized to enter into during the workday and there were no further problems. The administrative law judge found that in the "context of a long and apparently good bargaining relationship, it would be illogical and inequitable to find that this momentary misunderstanding, promptly ameliorated, constituted a refusal to bargain." The judge further found that the supervisor's threat of discipline was not an independent violation of Section 8(a)(1).

In the instant case, an employee member of the Union bargaining committee was told by a member of Respondent's supervisory staff that she should obtain the company's health insurance because Respondent was planning to "get rid" of the Union. This statement was made in the context of bargaining for an initial contract, and in the face of substantial unilateral changes implemented by Respondent subsequent to its assumption of operations at the Hotel. In addition, these comments were made to Figueroa apparently within moments of a meeting of managerial personnel, and were placed in that context by Duran (who reported what he had heard "upstairs.") Under these circumstances I find that Duran's comments to Figueroa were not of a negligible nature.[29] While it is true that another managerial employee intervened to stop the discussion from going forward, there was nothing by way of "prompt amelioration" of the impact of such comments. The Board has long held that while an employer can sometimes relieve itself of liability for unlawful conduct by repudiating such conduct, effective repudiation requires that it be timely, unambiguous, specific to the coercive conduct, free from other unfair labor practices, adequately published to employees and containing assurances that no further interference with Section 7 rights will occur. *Passavant Memorial Hospital*, 237 NLRB 138, 139 (1978). Such criteria have not been met here. Under these circumstances, I conclude Respondent has violated Section 8(a)(1) of the Act, as alleged.[30]

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[29] Respondent's argument that the Union did not take the comment seriously is belied by the fact that Demand specifically asked for assurances that Respondent was going to continue bargaining with the Union.

[30] I note that Respondent additionally challenges Figueroa's credibility. I found, however, that she testified in a forthright and credible manner. Moreover, her testimony on this issue is unrebutted. I note that Duran is no longer employed by Respondent. However, Respondent presented no testimony from Nanajara, an admitted manager, to refute her account. Nor has Respondent explained why it could not do so. I conclude that its unexplained failure to adduce

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Conclusions of Law

1. Respondent is an employer engaged in commerce within the meaning of section 2(2), (6) and (7) of the Act.

2. UNITE, HERE Local 69 is a labor organization within the meaning of Section 2(5) of the Act.

3. The following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All bellmen/valets, bartenders, bar assistants, tournant cooks, cooks I, cooks II, pantry workers, room attendants, housemen, pot washers, stewards, night cleaners, cafeteria attendants, hosts-hostesses/cashiers, servers, buspersons, storeroom employees, and linen employees employed by Rosdev Hospitality, Secaucus LP and La Plaza, Secaucus, LLC, at its facility located in Secaucus, New Jersey, excluding office clerical employees, confidential employees , executives, guards and supervisors as defined in the Act.

4. At all material times, the Union has been the exclusive representative of the employees in the above-described appropriate unit, for the purposes of collective bargaining with respect to wages, rates of pay, hours of employment and other terms and conditions of employment.

5. Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act by:

(a) Unilaterally, without notice to or consultation with the Union, announcing that for purposes of benefits including vacation leave and sick leave accrual, employees' seniority would commence on December 23, 2004.

(b) Unilaterally, without notice to or consultation with the Union, reducing the accrual rate of vacation leave and sick leave for employees in the unit.

6. Respondent has interfered with, restrained and coerced its employees in the exercise of their rights guaranteed by Section 7 of the Act, and has thereby engaged in unfair labor practices in violation of Section 8(a)(1) of the Act by informing its employees that Respondent is going to get rid of the Union.

7. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to

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testimony on this issue gives rise to an inference that, had Respondent called this witness to testify, such testimony would have been adverse to Respondent. *GATX Logistics*, 323 NLRB 328, 331 fn. 9 (1997); *Asarco, Inc*., 316 NLRB 636,640 (1995).

effectuate the policies of the Act. Having found that Respondent unilaterally changed the manner in which seniority is determined and unilaterally changed the accrual rate of vacation leave and sick leave of its unit employees, I shall recommend that Respondent cease and desist from making unilateral changes in the wages, hours and other terms and conditions of employment in the appropriate unit herein, and that Respondent make whole said employees for any loss of pay or other benefits they may have suffered as a result of Respondent's unilateral changes with interest as set forth in *Ogle Protection Service*, 183 NLRB 682 (1970) enfd. 444 F.2d 502 (6th Cir. 1971) with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). I shall also recommend that Respondent rescind its unilateral changes and restore the seniority policy and rates of accrual of vacation leave and sick leave as was in effect prior to December 23, 2004, until such time as Respondent negotiates in good faith with the Union to impasse, or agreement.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[31]

ORDER

The Respondent, Rosdev Hospitality, Secaucus, LP and La Plaza, Secaucus, LLC, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally, without notice to or consultation with the Union, announcing that for purposes of benefits including vacation leave and sick leave accrual, employees' seniority would commence on December 23, 2004.

(b) Unilaterally, without notice to or consultation with the Union, reducing the accrual rate of vacation leave and sick leave for employees in the unit.

(c) Telling employees that Respondent will get rid of the Union.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the unilateral changes made in wages, hours and other terms and conditions of employment of the employees and the above-described unit, and continue the wages, hours and other terms and conditions of employment in effect prior to December 23, 2004, until such time as Respondent negotiates in good faith with the Union to agreement or impasse.

(b) Make whole the employees in the appropriate unit for any loss of pay or other benefits they may have suffered as a result of the above-described unilateral changes, in the manner set forth in the remedy section of this Decision.

[31] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facility in Secaucus, New Jersey copies of the attached notice marked "Appendix"[32] in both English and Spanish. Copies of the notice, on forms provided by the Regional Director for Region 22 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 23, 2005.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., July 28, 2006.

_____
Mindy E. Landow
Administrative Law Judge

[32] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT, unilaterally and without notice to or consultation with the Union make changes in the wages, hours and other terms and conditions of employment, including changes in seniority and the rate of accrual of vacation leave and sick leave for our employees in the following unit:

All bellmen/valets, bartenders, bar assistants, tournant cooks, cooks I, cooks II, pantry workers, room attendants, housemen, pot washers, stewards, night cleaners, cafeteria attendants, hosts-hostesses/cashiers, servers, buspersons, storeroom employees, and linen employees employed by Rosdev Hospitality, Secaucus, LP and La Plaza, Secaucus, LLC, at its facility located in Secaucus, New Jersey, excluding office clerical employees, confidential employees , executives, guards and supervisors as defined in the Act.

WE WILL NOT tell our employees that we are going to get rid of the Union.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind changes in the wages, hours and other terms and conditions of employment, including changes in seniority and the rate of accrual of vacation leave and sick leave for our employees and WE WILL restore the wages, hours and other terms and conditions of employment of our employees in the above-described unit in effect prior to December 23, 2004, until such time as we negotiate in good faith with the Union to agreement or to impasse.

WE WILL make whole the employees in the above-described unit for any loss of pay or other benefits they may have suffered as a result of our unilateral changes in seniority and the rate of accrual of vacation leave and sick leave.

ROSDEV HOSPITALITY, SECAUCUS, LP AND
LA PLAZA, SECAUCUS, LLC
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

20 Washington Place, 5th Floor
Newark, New Jersey 07102-3110
Hours: 8:30 a.m. to 5 p.m.
973-645-2100.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 973-645-3784.